

### REMARKS

Entry of the foregoing, reconsideration and withdrawal of the restriction requirement and examination of all of the claims on the merits are respectfully requested in light of the following remarks.

Applicants have been required by the restriction requirement to elect one of Groups I to V as set forth on page 2 of the Official Action for examination herein. Accordingly, applicants hereby elect, with traverse, Group II, claims 1, 2 and 9, drawn to compounds of formula (1) in which X is CH and a process for their preparation. In light of the foregoing amendment to claims 5 and 7, deleting the clause "optionally with another medicament" (the only reason given for separate grouping of those claims), Group V claims 5-8, should be regrouped with the claims to the compounds encompassed by Group V. Thus, it is believed that the elected Group II reads on claims 1, 2 and 5-9 in which X is CH.

The restriction requirement is traversed because it is not consistent with unity of invention requirements for national phase applications. In particular, the claims meet the requirements (A) and (B)(1) set forth in the discussion of Markush Practice under the Patent Cooperation Treaty (MPEP 1850, 1800-98 to 1800-99, Rev. 3, August 2005). It is clear from formula (1) that all of the compounds share a chemical structure which occupies a large portion of the structure, the variation in X between CH and N being a minor portion of the overall structure. Only when such a large common structure is not present, do the requirements set forth by the Examiner come into play. Clearly, it is not necessary to resort to the "special technical feature" requirement referred to by the Examiner. Thus, there is no valid reason under unity

of invention requirements to insist on restriction between the instances where X is N on one hand and X is CH on the other.

Further, any reasons for creating a separate Group V, when claims 5-8 did not even require an additional active ingredient which was in fact only optional, are no longer present because claims 5-8 have been amended so that the clause referring to an optional active ingredient is no longer present. Thus, claims 5-8 are properly grouped with the compound claims: the compounds, compositions, method of use and method of preparation claims (claims 1, 2, and 5-9) are sanctioned for inclusion in a single application by PCT Rule 13. See the discussion of Combinations of Different Categories of Claims under the Patent Cooperation Treaty, MPEP 1850, 1800-97, Rev. 3, August 2005. Further, as claim 3 is directed to a direct intermediate to the corresponding compound of formula (1), such that the structure of the intermediate (2) is incorporated into the structure of the final product (1), it would be appropriate to examine claim 3 together with the elected subject matter.

Finally, it is pointed out that all claims were searched during the international phase, which creates a presumption that the claims meet the PCT unity of invention requirements. Moreover, since all claims were already searched in the international phase, there does not appear to be any convincing reason why the Examiner should insist on restriction herein.

In view of the foregoing, reconsideration and withdrawal of the restriction requirement and examination of all claims in their entireties on the merits are respectfully requested.

Respectfully submitted,

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